

TERMS & CONDITIONS FOR ACCOUNT ACCESS OF AUTOMATED COMMERCIAL ENVIRONMENT [ACE] PORTAL

I. Overview

This document sets forth the obligations and responsibilities of the “Account Owner” and “Proxy Account Owner”, binding each party respectively, to the extent applicable to each, and which must be followed as a condition for access to the Automated Commercial Environment (“ACE”) Secure Data Portal (hereinafter, “ACE Portal”). This document also describes the participation of the “Account Users.”

By signing below and accessing the ACE Portal, the Account Owner agrees to be bound by the terms and conditions of this document and any modifications thereto, the Federal Register Notice (FRN) announcing this test (67 FR 21800, May 1, 2002) and any applicable FRN, including subsequent modifications to currently existing FRN, as may relate to the ACE test.

Written notice of modification to this language will be provided in advance to the Account Owner. Additional notification regarding the effective date of a revised version of the Terms and Conditions document will also appear on the ACE Portal login page.

If the Account Owner does not agree, this document should be disregarded and the Account Owner must cease accessing the ACE Portal. The CBP Account Manager should also be contacted in this case.

Participation in the ACE Portal is not confidential. Lists of approved participants will be made available to the public.

II. Account

The term “Account” as employed in this document refers to a business entity that has volunteered to participate in an ACE test. The Account may be defined by any of the following business categories:

- a. Importer:
 - Possesses one or more Importer of Record (“IR”) numbers;
 - Participates in the Customs-Trade Partnership against Terrorism (“C-TPAT”); and
 - Has access to the Internet (67 FR 21800, May 1, 2002)
- b. Broker:
 - Possesses the ability to make periodic payment via ACH Credit or ACH Debit;

- Possesses the ability to file entry/entry summary via ABI (Automated Broker Interface);
- Participates in the Customs-Trade Partnership against Terrorism (“C-TPAT”); and
- Has access to the Internet (69 FR 5362, February 4, 2004).

c. Carrier:

- Possesses a Standard Carrier Alpha Code (SCAC)
- Has access to the Internet (69 FR 5360, February 4, 2004)

The Account must determine the category (or categories, where more than one is applicable) that best describes the Account. The Account should ensure that the Account Application Process requirements cited in the appropriate FRN, are satisfied in full.

In order to access the ACE Portal an entity or individual must be an Account Owner, Proxy Account Owner, or an Account User authorized by an Account.

The Information contained in ACE and accessed through the ACE Portal includes confidential commercial or financial information that pertains to the Account. No access, outside of the Department of Homeland Security or as otherwise authorized by Law (e.g., Freedom of Information Act, Privacy Act, Trade Secrets Act, etc.), to information which pertains to an Account is permissible absent the authorization of the Account.

III. Account Owner

The term “Account Owner”, when referring to an importer, broker or carrier ACE Account, is defined as an individual who administers and controls Account User access to the ACE Portal on behalf of the Account.

In all cases (i.e., importer, broker or carrier ACE Account), the Account Owner is that individual identified and authorized to serve as the representative of the Account relating to the administration of access to the Account’s information through the ACE Portal.

The Account may designate only one Account Owner for the Account. The Account may designate one or more Proxy Account Owners, where deemed necessary. The authority of the Proxy Account Owner may be limited by the Account Owner. In no case may a Proxy Account Owner designate other Proxy Account Owners.

A. Responsibilities:

1. The Account Owner administers and controls Account User access to the ACE Portal. The Account Owner is authorized to grant access to

information relating to the Account (including information protected by the Trade Secrets Act or Privacy Act), through the ACE Portal, to any individual identified by the Account Owner as an Account User. The Account Owner is the point of contact for the Account with respect to all information submitted by or on behalf of the Account.

2. The Account must separately authorize the Account Owner to exercise any and all authority, apparent or otherwise, to fulfill the enumerated responsibilities contained herein and in any applicable FRN. Said responsibilities include the authority to access and control information associated with newly acquired IR numbers. The authority of the Account Owner must include the ability to bind the Account, generally, and to hold and save CBP, its officers, agents, and employees, and their heirs, successors, or assigns, harmless from any claims in connection with the release of information disclosed as authorized by the Account Owner. The authority of the Account Owner is transferable (see Section V, Part C).

The Account must complete and submit to CBP the Power of Attorney form as proof of designation of the Account Owner. This document must be signed by both the Account and a witness.

3. The Account Owner is responsible for authorizing and controlling any and all access to the ACE Portal. The Account Owner is responsible for enforcing any limitations on access to the ACE Portal, including any limitations on any Proxy Account Owner and/or Account User. The Account Owner assumes liability for the consequences of any disclosure of Account information resulting from the access to the ACE Portal.
4. The Account Owner, Proxy Account Owner, and any Account User are responsible with respect to the accuracy of any information submitted through the ACE Portal to CBP.
5. The Account Owner is responsible for maintaining the accuracy of the Account's information.
6. The Account Owner must submit immediate notification of change pertaining to the identity of the Account Owner or Account Structure (e.g., change concerning control of an IR number or SCAC code) (see, Section V, Part C, a and b)
7. The Account, Account Owner, Proxy Account Owner, and any Account User are each jointly and severally liable for safeguarding and ensuring the confidentiality of the Account's information.
8. The Account Owner is responsible for ensuring that Proxy Account Owners and Account Users are authorized to access information

pertaining to the Account through the ACE Portal. The Account Owner is also responsible for ensuring that Proxy Account Owners and Account Users do not further disseminate information pertaining to the Account without proper authorization. CBP grants no authorization to the release of information obtained through the ACE Portal beyond the Account Owner.

9. Information contained in ACE and accessible through the ACE Portal is protected and, as appropriate, subject to disclosure by CBP under the provisions of the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. § 552a), and the Trade Secrets Act (18 U.S.C. § 1905). Information accessed through the ACE Portal that derives from another Agency of the United States Government is subject to the “Third Party Rule” which separately requires the approval of that other agency before the information may be disseminated beyond the Account Owner, Proxy Account Owner, and Account User.
10. The failure of an Account Owner to access the ACE Portal for a period of ninety (90) days, consecutively, will result in termination of access to the ACE Portal for the Account Owner. Access may be restored by contacting the Help Desk.
11. The failure of a Proxy Account Owner or an Account User to access the ACE Portal for a period of ninety (90) days, consecutively, will also result in termination of access to the ACE Portal for the Proxy Account Owner or Account User. Access may only be restored upon re-authorization by the Account Owner.
12. The Account, through the Account Owner, must submit to CBP the details of its Business Structure and Relationships prior to being approved by CBP for access through the ACE Portal. The Account Owner is responsible for ensuring that this information remains current.
13. The Account Owner, Proxy Account Owner, and Account User, are responsible for complying with the record keeping requirements in accordance with law, including but not limited to, 19 U.S.C. 1508 and 1509.

IV. Account User

The Account User is any individual identified and authorized by the Account Owner and/or Proxy Account Owner, to access information that pertains to the Account through the ACE Portal. An Account User’s access is subject to limitation by the Account Owner and/or Proxy Account Owner.

V. Account Establishment and Maintenance

CBP reserves the right to disapprove any authorization of access to the ACE Portal for reasons pertaining to the security of ACE, mission of CBP, or National Security.

CBP reserves the right to monitor access to the ACE Portal. In the event of CBP disapproval of the Account structure and/or the Account Owner designated by the Account, the Account reserves the right to submit a revised Account structure or alternate Account Owner, respectively.

A. ACE Portal

The use of the term ACE Portal refers to a WEB based user interface for ACE. The ACE Portal is the point of electronic access to information resident in ACE that pertains to the Account.

B. ACE Portal Sign-On Notice

This Terms & Conditions Document appears on the introductory screen for the ACE Portal. Any access of the ACE Portal constitutes acceptance of the Terms and Conditions document and any modifications thereto.

C. Notice of Change

- a. Change in the Status or Condition of the Account Owner
The Account Owner must provide CBP with Notice of Change within two business days of a material change to the status or condition of access of an Account Owner or Account User (e.g., changes in identity, changes relating to the basis of authorization for the Account Owner, including the acquisition of further IR numbers, etc.). In the event of incapacity on the part of the Account Owner, the Account will designate a new Account Owner to act on behalf of the Account within two business days of notifying CBP of the change. At such time that a new Account Owner is designated for the Account, the Account must submit a new Power of Attorney form to the CBP Account Manager along with the requisite signed Terms & Conditions document.
- b. Change in the Status or Condition Pertaining to the Account
Changes in the circumstances relating to the acceptance of an Account's application for participation will result in the need for the Account to re-apply for access (e.g., change in structure of the Account, change in SCAC, etc.). The following represent significant changes in the status or the condition of the Account requiring reapplication. Note, this list is not exhaustive:
 1. Reorganization. Any Reorganization of an Account resulting in the issuance of a new IR number will require re-application.

2. Transfer of control of an IR number. Any transfer of control of an IR number will require application by the acquiring party before said entity can access the ACE Portal, unless the acquiring party is already an Account (see, Notice of Change, Section V Part C, paragraph b).
3. Division or Spin-Off. In the event of a division or spin-off from an Account, the Account will retain access to the ACE Portal and the new business entity formed from the division or spin-off must apply for access (see, Notice of Change, Section V, Part C, paragraph b).
4. Access to historical information. In the event of a transfer of control of an IR number, access to historical information associated with said IR number will be shared by the transferor and transferee, equally, unless otherwise explicitly addressed by the terms of the transfer. Absent express treatment in a conveying document, a viable business entity, that transfers control of its IR number, retains a residual interest in access to its past information. Similarly, absent express treatment in a conveying document, a viable business entity, that acquires through transfer or other means control of a new IR number, also acquires access to the past information, historical or archival, associated with that IR number.

D. Use of the Significant Activity Log (SAL)

For purposes of the ACE Portal, the Significant Activity Log (SAL) is a repository for historical reference of communications, between the Account and CBP, effectuated through other means. It does not replace regular or required methods of communication. Statements made within the SAL, are not to be considered the official position of CBP. No statement made through the SAL implies or creates a requirement that; (1) the statement be verified, or (2) the statement is accurate or correct. The Account is reminded that the official position of CBP is established through binding Rulings issued by the Office of Regulations and Rulings (see 19 CFR part 177), and that the appropriate way of making prior disclosures is set forth in 19 CFR 162.74 (also reference Part 181, subpart H). The SAL is not to be considered as a medium for establishing the official position of CBP.

VI. CONDITIONS OF BREACH

Failure to comply with the terms and conditions of this document, the Federal Register Notice announcing this test (67 FR 21800, May 1, 2002), and any applicable FRN, including subsequent modifications to currently existing FRN, as may relate to the ACE test, may result in suspension or removal from the ACE Prototype and may subject the participant to penalties or administrative action in

accordance with law. Participants should refer to the Misconduct Section of the Federal Register notice for further information on the failure to meet the Terms and Conditions of participating in this prototype.

No amendment or modification of this document by the Account is authorized or permitted. Any attempt to modify this document by the Account will result in its rejection.

A false statement or claim may subject a person to prosecution under 18 U.S.C. 1001 and/or 1621 and is punishable by a fine and up to five years imprisonment.

In witness of the acceptance of these terms, I hereby sign or affix my name, or otherwise affirmatively act in assent:

Account Owner, on Behalf of the Account

Date

Please retain an executed copy of this Document for your Records.